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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/602,198	06/22/2000	Theodore G. Habing	068757.P063C	8408

7590 10/10/2002

Christensen O'Connor Johnson Kindness PLLC  
1420 Fifth Avenue  
Suite 2800  
Seattle, WA 98101-2347

[REDACTED] EXAMINER

HWANG, VICTOR KENNY

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

3764

DATE MAILED: 10/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

SD

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/602,198	HABING ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Victor K. Hwang	3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 16 August 2002.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 2-9 and 11-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2-9 and 11-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 June 2000 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>10</u> | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 22, 2002 has been entered. Claims 2-9 and 11-21 are pending.

### ***Claim Rejections - 35 USC § 112***

2. Claims 8 and 11-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, the recitations "each of the main and secondary pivots has a respective pivot axis" and "orthogonal to the pivot axis of the main pivot" repeat limitations found in claim 2 (Two Times Amended) and make the claim indefinite.

In claim 11, the recitation that the secondary pivots are inclined with respect to vertical is indefinite since the invention claimed is a press arm and the reference to the vertical appears to be an intended use and application of the press arm.

Claims 12-14 depend from claim 11 and are likewise indefinite.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 2-4, 6-8, 15, 16, 18 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by *Ish, III* (US Pat. 5,779,601). *Ish, III* discloses an exercise apparatus comprising a frame 11; a press arm 25 pivotally coupled to the frame (see Fig. 12), the press arm having a main arm member 25 depending from a main pivot 26a on the frame and a pair of secondary arms 124 coupled to the main arm member at respective secondary pivots 126, wherein the main pivot and each of the secondary pivots has a respective pivot axis and wherein the pivot axis of the secondary pivots are substantially orthogonal to the pivot axis of the main pivot, and wherein each of the secondary arms pivot both inwardly and outwardly from an pendulous at rest position about a respective one of the secondary pivots along an arcuate path that is fixed relative to the main arm member, the at rest position located at a start position for a

straightforward chest press, and wherein each of the secondary arms are suspended when at rest; a source of exercise resistance 17; and a means for coupling the source of exercise resistance to the press arm. The source of exercise resistance comprises a weight 17. The means for coupling the source of exercise resistance to the press arm comprises a cable 56. The main arm member includes a transverse cross member 50. The secondary pivots are disposed at opposite ends of the transverse cross member. Each of the main and secondary pivots has a respective pivot axis and the pivot axes of the secondary pivots are parallel to each other and orthogonal to the pivot axis of the main pivot.

5. Claims 2-4, 6-9 and 11-21 are rejected under 35 U.S.C. 102(e) as being anticipated by *Simonson* (US Pat. 5,643,152). *Simonson* discloses an exercise apparatus comprising a frame 10; a press arm 50,60 pivotally coupled to the frame, the press arm having a main arm member 31,47 depending from a main pivot 30 on the frame and a pair of secondary arms 60 coupled to the main arm member at respective secondary pivots 32,34, wherein the main pivot and each of the secondary pivots has a respective pivot axis and wherein the pivot axis 48,49 of the secondary pivots are substantially orthogonal to the pivot axis 46 of the main pivot; a source of exercise resistance 23; and means coupling the source of resistance to the press arm. Each of the secondary arms pivot both inwardly and outwardly from an at rest position about a respective one of the secondary pivots along an arcuate path that is fixed relative to the main arm members. When the angle between the secondary pivot axes and the main pivot axis is orthogonal, there is no lateral resistance and the handles 61 can be moved laterally without lifting the weight stack 23 at all. Furthermore, the user can move one hand in the lateral

direction without moving the other, and perceive no difference between the resistance applied to the left and right arms. Such a system may be desirable to allow the user to select independent, comfortable hand positions while performing a traditional chest press exercise (col. 7, lines 31-46).

The source of exercise resistance comprises a weight 23 coupled by a cable 40 to the press arm. The pivot axes of the secondary pivots are parallel to each other and orthogonal to the pivot axis of the main pivot. Each of the two arms extend at an oblique angle relative to the respective one of the secondary pivot axis. The secondary arms are pendulous when in the at rest position located at the start for a straightforward chest press. The secondary pivots are substantially inclined with respect to vertical. The main arm member includes a transverse cross member 31 with the secondary pivots disposed at opposite ends of the transverse cross member.

#### *Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Simonson* (US Pat. 5,643,152) in view of *Webber* (US Pat. 5,236,406). *Simonson* has been discussed above, and such discussion is incorporated herein. *Simonson* discloses the invention claimed

except for the means coupling the source of exercise resistance to the press arm further comprising at least one pulley rotatably mounted on the main member (claim 5).

*Webber* shows an analogous exercise apparatus comprising a press arm 14; a weight 80; and a means for coupling the weight to the press arm comprising a cable 76 coupled to the weight and a pulley 64 rotatably mounted to the press arm. The position of the pulley can be positioned on the press arm so that the force required to move the press arm toward the extended position exceeds the maximum of the weight mass (col. 7, lines 50-54), i.e. provide a reduced mechanical advantage.

Inasmuch as both *Simonson* and *Webber* are drawn to chest press exercise, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify *Simonson* by providing a pulley on the press arm rather than the dead end 57 as disclosed, in order to provide a decreased mechanical advantage as taught by *Webber*, so that less weight mass is required to provide the same exercise resistance.

#### *Response to Arguments*

8. Applicant's arguments with respect to claims 2-9 and 11-13 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time. The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891. The facsimile number for submitting Official papers to Technology Center 3700 is (703) 872-9302 and for submitting papers After Final to Technology Center 3700 is (703) 872-9303.

Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3700 receptionist at (703) 308-0858.



Victor K. Hwang  
October 4, 2002

Jerome W. Donnelly  
Primary Examiner

